

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

OPPORTUNITY HOUSE, INC.

Employer

And

Case 25-RC-244145

RETAIL WHOLESALE AND DEPARTMENT
STORE UNION COUNCIL, UFCW

Petitioner

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of all full-time and regular part-time residential trainers employed by the Employer at its CILA (Community Integrated Living Arrangement) and Community Living Facilities (CLF) group homes, which include Alden Home, Center Cross Home, Maplewood Home, Brian Home, Linden Home, Manor Home, Rich Road Home, Sacramento Street Home, Hudson Home, and CLF Home.

The Employer maintains that the unit sought by Petitioner is not appropriate and the only appropriate unit must also include the following employees employed by the Employer at its main building and its group homes:

Lead Residential Trainers	Developmental Trainers
Residential Subs	Developmental Training Coordinators
Assistant House Managers	Work Supervisors
Case Managers	Warehouse Assistants
Food Service Directors	DSP Specialists
Medical Appointment Assistants	Recreation Assistants
Job Coaches	Special Olympics Coaches
Vocational Coordinators	Home Based Facilitators

Petitioner and the Employer agree that the unit should include all full-time and regular part-time residential trainers and exclude house managers, the program director, the director of residential services, the assistant production manager, social workers, registered nurses, psychologists, consultants, janitors, office clerical employees, professional employees, and supervisors as defined in the Act. If the unit were to be expanded to include assistant house managers, case managers, and/or developmental training coordinators, Petitioner asserts those classifications are supervisory pursuant to Section 2(11) of the Act. Additionally, the “regular” employment status of residential subs is in question, as they are called as needed to fill in for residential trainers and do not have regular full-time or part-time schedules.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the

record and relevant Board law, I find that the unit sought by Petitioner is not appropriate insofar as the lead residential trainers and residential subs should also be included.

I. THE EMPLOYER'S OPERATION

The Employer is a community-based non-profit organization that provides residential, vocational, and ancillary services, including recreation and social activities, for adults with developmental disabilities in DeKalb County, Illinois. The organization's mission is to "help people with intellectual and developmental disabilities to work, live in the homes of their choice, and enjoy community life." The Employer serves adults with varying levels of developmental disabilities and offers several programs and services, which are described in more detail below. Approximately 125 employees currently work for the Employer in its various programs.

The residential program provides group housing for clients. The Employer operates ten group homes, all located in Sycamore, Illinois or DeKalb, Illinois, and located anywhere from 500 feet to seven miles away from the Employer's main building, where the Employer's business operations, day programs, and other services are located. The group homes are staffed 24-hours a day, 7-days a week.

The Employer's main building is located in Sycamore, Illinois, and houses the day program, which consists of the work services and developmental training service programs. On weekdays, clients can participate in the work services program, where they perform paid employment, or the developmental training program, where they learn various skills and perform activities in a classroom setting. The Employer also has a vocational services program to help clients obtain employment in the community, a community supports program to provide recreation, sport, and other support in the community, and a home-based services program for clients who live in their own homes or with family. These programs operate out of the main building as well, though employees also work in client homes and in the community.

Bob Shipman is the executive director of Opportunity House, and the program director and operations manager both report to Shipman.¹ Carol Parsons, the program director, oversees most of the various programs the Employer offers, including the vocational services, developmental training services, community supports program, recreation services, home-based support services program, and the CILA, Hudson, and CLF group homes. The operations manager oversees the work services program and production.

Group Homes

The Employer operates its group homes with the following purpose: "To provide training, supervision, and support to meet the needs of clients, with input and participation from the client's family as appropriate. Clients are recognized as persons who are citizens of a community with equal rights, privileges, opportunities, and responsibilities accorded other

¹ The Marketing and Development Coordinator, Finance Director, and Human Resource Manager also report to Shipman; however, those departments are not at issue in the present case.

citizens.” Group home services are described in the program descriptions as continuous 24-hour staff coverage. Group home clients live in the homes and receive assistance and training in personal appearance, laundry and clothing care, budgeting and money management, telephone use, recreation and leisure, home and community safety practices, cooking and nutrition, shopping, social skills, and decision-making, among other things.

The group homes are all located relatively close to the main building, out of which the Employer offers day programs and other non-residential services and maintains its business operations. The residential director oversees the program and reports to the program director. Under the residential director is an assistant residential director, who supervises residential case managers and the director of nursing, who supervises registered nurses and medical appointment assistants. The residential director also oversees the house managers, who manage the group homes. House managers are assigned to manage one or two group homes each.

Eight of the Employer’s group homes are Community Integrated Living Arrangements (“CILA”), which refers to the funding source and licensing requirements for the home. CILA homes have a maximum capacity of eight clients. The Employer also operates one Community Living Facility (“CLF”) group home, which receives funding from a different source. The CLF accommodates up to sixteen clients at a time. The Employer also operates one privately owned home called Hudson Home, which houses one client (a relative of the private homeowners).

The group homes are almost all staffed 24-hours a day, 7-days a week. Some group homes are 24-hour sleepover homes, where employees work shifts longer than 24-hours and actually sleep at the home, and some group homes are 24-hour awake homes, where employees work 12-hour shifts and do not sleep at the home. The awake homes are staffed 24-hours a day like the sleepover homes, but employees are not allowed to sleep during their shifts.

Rich Road Home, Sacramento Home, Maplewood Home, Brian St. Home, Manor Home, and Linden Home are all 24-hour sleepover CILA homes. Alden Home and Center Cross Home are 24-hour awake CILA homes, and the CLF is a 24-hour awake home. The Hudson Home is a sleepover home, but it is not technically 24-hour. Employees working at the Hudson Home sleep over at the home but may leave the house during the day if the client participates in day program services at the main building or is out of the home for some other reason.

Besides scheduling (shifts vs sleepover), all group homes are staffed similarly, whether they are 24-hour sleep or 24-hour awake or the Hudson Home. House managers are responsible for operating the group homes and managing group home staff. There are five CILA house managers who manage one to two homes each, one CLF house manager, and one Hudson House manager. There are also assistant house managers at the CILA homes. There are three CILA assistant house managers, who cover one to three homes each. The CLF home has a food service director, who is in charge of planning and preparing meals for the clients living in the CLF home. At full staffing levels, the Employer employs sixty-four residential trainers between the CILA and CLF homes, and four residential trainers at the Hudson House. Additionally, there are four residential case managers, who report to the assistant residential director instead of the residential director or house managers. Case managers cover a number clients in one to three

houses each. Finally, the Employer maintains a list of residential subs, who cover for regular residential trainers when they cannot work their regularly scheduled hours. Residential subs are required to work ten to fifteen hours every couple months to remain on the list.

Because the group homes are staffed 24-hours, the Employer maintains an on-call rotation for oversight in case issues or emergencies arise during evenings, weekends, and holidays when managers are not present in the homes. House managers, assistant house managers, and case managers are required to be in the on-call rotation for the respective houses in which they regularly work. The on-call person is expected to respond to any issues that may arise at the house while no manager is present. House managers, assistant house managers, and case managers also conduct “drop-ins” in the homes. A drop-in is an unannounced visit to the home to observe residential trainers at work. Drop-ins can last anywhere from twenty minutes to two hours. When the group homes are all fully staffed, the Employer employs sixty-eight residential trainers, a small number of lead residential trainers, numerous residential subs, three assistant house managers, four case managers, and one food services coordinator.

Group Home Residential Trainer

Primary Duties:² Teach and provide support and supervision to clients in the group home.

Description: The residential trainers in essence live in the group homes with the clients and provide continuous support, care, and services in a home setting. They regularly bathe, clothe, feed, and toilet clients, and teach clients basic life skills, such as cooking, shopping, budgeting, money management, and housekeeping skills. Residential trainers also take residents out into the community for activities, appointments, and errands or to other group homes to socialize with other clients. During weekdays if clients are at the main building for the day program or working in the community through vocational services, residential trainers clean the group home, do client and household laundry, and shop for the home.

Requirements: Residential trainers are required to have a high school diploma or GED, pass the post-offer functional screening test if required, be able to physically assist mobility impaired clients and negotiate stairs at times, maintain a valid driver’s license and auto insurance, and have a personal vehicle and phone for use at work. They are also required to be registered as a Developmental Disability Aide and approved by the Employer to administer medications within three months of employment.

Terms and Conditions: Residential trainers work in their respective group homes and report to the house manager. Their schedules and benefits vary depending on the group homes in which they work. Rich Road, Sacramento, Hudson, Maplewood, Brian Street, Manor, and Linden Homes are 24-hour sleepover homes. Typically, there are three full-time sleepover residential trainers and two part-time sleepover residential trainers who alternate weekends. They work in shifts of 48 to 72 hours at a time. Those residential trainers have designated times during

² The record indicates that each job classification has primary or main duties and other common duties, and each classification’s primary duties are reflected in the “job summary” section on the position descriptions.

their scheduled shifts to sleep while the clients are sleeping. Sleepover residential trainers do not receive holidays off like other employees and they are not excused from work due to inclement weather or for any other reason. Due to the inflexibility of their scheduled shifts, sleepover residential trainers specifically have wage agreements with the Employer to incorporate pay for holidays, vacation, and sick time. For the hours they are sleeping during their scheduled shifts, sleepover residential trainers receive their base hourly pay rate, which is similar to that of non-sleepover residential trainers. During the hours sleepover staff are awake at work, they receive an increased rate of pay to account for the holiday, vacation, and sick time they don't otherwise receive. The CLF, Center Cross, and Alden homes are 24-hour awake homes because clients in those homes require continuous care for 24-hours a day. Residential trainers working at these three homes work twelve hour shifts since they are not able to sleep at the homes. They do not have wage agreements like the sleepover staff, though they are required to work their scheduled shifts regardless of holidays, weekends, or weather emergencies. Residential staff receive a 15-minute break for every four consecutive hours worked and are paid for meal periods, as they eat meals while continuing to care for clients

Lead Residential Trainer

Primary Duties: Act as team lead at designated homes. Teach, provide support, and supervise clients in the group home.

Description: Lead residential trainers perform the same functions as the residential trainers, but they are more experienced and can assist other residential trainers with questions or when basic issues arise. They also complete food bank ordering and document grocery and food budgets for the home, help to train new residential trainers in the home, and maintain updated communication binders and other directories in the home.

Requirements: Lead residential trainers are required to have at least six months of direct client care experience, but the minimum job requirements are otherwise identical to those of the residential trainer.

Terms and Conditions: Likewise, lead residential trainers work the same schedules as residential trainers, whether they are sleepover or shift schedules, and have the same breaks, pay, benefit structure, and other terms and conditions of employment.

Residential Sub

Description: Residential subs perform the exact same functions as residential trainers, but on an as needed basis. Residential subs are required to work ten to fifteen hours every couple of months to remain on the list, and within those parameters, subs can accept or decline as many hours as they want. The number of residential subs on the list varies anywhere between three and fifteen subs at a time. Some individuals on the residential sub list are former regular employees and some residential subs have moved into regular positions after serving as subs.

Requirements: Residential subs must meet the same minimum qualifications as a regular residential trainer and must have current DSP, Rule 50, First Aid, and CPR certifications to work.

Terms and Conditions: When they accept work, residential subs work the same work schedules as residential trainers. They are paid hourly, but residential subs are not eligible for benefits. Like residential trainers and lead residential trainers, residential subs report to a house manager.

Assistant House Manager³

Primary Duties: Assist in the management of the general operations of the home under the discretion of the house manager or in the absence of the house manager. Exercise discretion and independent judgement in decision-making of the home. Teach, provide support, and supervise clients in the group home.

Description: Assistant house managers are assigned to two or three houses each and help manage the operation of those homes. They also perform functions similar to the residential trainers, such as supervising clients in the home, feeding clients, and helping clients with cleaning and other household tasks. The assistant house manager position is intended to be developmental to offer employees additional experience and training to take on more independent responsibility within the homes. The Employer created the assistant house manager position relatively recently and offered evidence that the employees currently in the assistant house manager positions are still developing the skills necessary to take on the additional responsibilities of the role. They share offices with house managers and/or case managers within the group homes. There is no evidence in the record that assistant house managers have independent authority to hire, fire, discipline, or direct the work of other employees and they are not involved in employee evaluations. Further, the evidence does not indicate they can effectively recommend hiring, firing, and disciplinary decisions.

Requirements: Assistant house managers are required to have a high school diploma or GED, maintain a valid driver's license and auto insurance, and have a personal vehicle and cell phone for use at work. They must have the ability to organize, analyze, communicate, plan, and manage, and be able to negotiate stairs in certain homes. Assistant house managers must also be registered as a DSP, approved to administer medication within three months of employment, and skilled in the use of Microsoft Office.

Terms and Conditions: Assistant house managers have a regular day-time schedule but are required to work later in the evening some days a week. They are also in the on-call rotation with house managers and case managers to be available during assigned overnights, weekends, and holidays, and to do random "drop-ins" at the group homes. Assistant house managers are paid a higher wage than other classifications. The record does not reflect the precise pay rates, but there is evidence that a newly hired assistant house manager would be paid a few dollars

³ The parties stipulated that the correct job title for this position is "Assistant House Manager."

more than a newly hired residential trainer. They are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Case Manager

Primary Duties: Provide case management for assigned clients. Assist department manager or house manager with general operations of the home.

Description: Case managers are assigned to two or three group homes each and provide case management for the clients living in those homes. They also assist the house manager with the general operations of the homes to which they are assigned. Case managers develop and implement behavior plans and coordinate services to meet the needs of their clients. They use discretion in program and client-related matters as well as prioritizing their own work and perform duties without direction or supervision. They ensure regulatory and policy compliance, assist in training and orientation of new employees, provide managers with information regarding work performance of other staff, teach modules in the DSP curriculum, and complete on-the-job competencies. Residential case managers also help to develop and implement departmental priorities and goals, monitor departmental functions for efficiency, and maintain familiarity with industry best practices and standards. Though case managers have discretion and authority to make independent decisions related to case management, they do not have independent authority to hire, fire, or discipline residential trainers, and they are not involved in employee evaluations. There is some evidence that case managers may be able to effectively recommend disciplinary decisions, but it is unclear how much weight is given to case manager recommendations.

Requirements: Case managers are required to be QIDP qualified and to complete continuing education requirements to maintain their QIDP status. To be QIDP qualified, they must have a bachelor's degree plus one-year experience working with developmentally disabled individuals. Case managers must also be able to organize, analyze, communicate, plan, and provide case management; maintain a valid driver's license and auto insurance; and have a personal vehicle and phone for use at work. They must be approved to administer medication within three months of employment and skilled in the use of Microsoft Office.

Terms and Conditions: Residential case managers typically share an office with the house manager and/or assistant house manager in one of the group homes to which they are assigned. They report to the assistant residential director. They are required to work later in the evenings, until around 7:00 or 7:30 pm, one or two nights a week, but otherwise they work flexible hours as they choose. They are also in the on-call rotation with house managers and assistant house managers to be available overnights, weekends, and holidays, and to conduct "drop-ins" at the group homes to observe residential trainers at work. Case managers are paid a higher wage than most other classifications. Case managers are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Food Services Director

Primary Duties: Responsible for food service functions.

Description: The position of food services director is unique to the Employer's CLF home, and the employee is responsible for food service functions solely at the CLF home. The food services director plans meals, ensures variety in weekly menus, orders food and kitchen items, and prepares and cooks meals for the CLF home. Additionally, the food services director will help clients learn kitchen skills to meet cooking goals and provide cooking classes for other staff members. The employee currently in the food services director position also performs some functions similar to residential trainers, though it is unclear from the record how much time she spends performing residential trainer duties.

Requirements: The food services director must have a high school diploma or GED, at least one year of experience in food service, and within three months of hire must obtain and maintain the Illinois Food Service Manager certification. The food services director must also have a valid driver's license and insurance and a personal phone, be registered as a developmental disabilities aide and approved to administer medications within three months of employment.

Terms and Conditions: The food services director works in the CLF group home and reports to the CLF house manager. She works a standard Monday through Friday schedule and is paid an hourly rate. The food services director is eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Nursing Department

The Nursing department falls under the umbrella of the Employer's residential program. The director of nursing oversees registered nurses ("RNs"), who train and authorize other staff to administer medications, and medical appointment assistants, who transport clients to medical appointments. The director of nursing reports to the residential director. The Employer's nursing staff work out of the Employer's main building and when fully staffed, there is at least one R.N.⁴ and two medical appointment assistants.

Medical Appointment Assistant

Primary Duties: Responsible for safely transporting clients to and from treatment, physician visits, and any other necessary appointments.

Description: The Employer created the medical appointment assistant position relatively recently due to a growing number of medical appointments for clients. When the position was created, both medical appointment assistants were transferred from other programs – one was a job coach and one was a residential trainer. The medical appointment assistants are responsible

⁴ Both parties agree that R.N.s should be excluded from the unit.

for safely transporting clients to and from treatments, physician visits, and any other necessary appointments. Medical appointment assistants may see the doctor or service provider with the client when necessary to make sure the client understands instructions, help communicate client symptoms to the doctor, and ensure the client takes the appropriate documents to the appointment and receives and fills any prescriptions. They also arrange client appointments and maintain follow up appointments.

Requirements: Medical appointment assistants are required to have a high school diploma or GED, must be able to physically assist mobility impaired individuals and pass a post-offer functional screening test if required. They also must maintain a valid driver's license and auto insurance and have a personal vehicle and phone to use for work. Medical appointment assistants must also be registered as a developmental disability aide and be approved to administer medications within three months of employment.

Terms and Conditions: Medical appointment assistants work out of an office in the Employer's main building, though much of their day is spent driving to and from clients' homes and medical appointments. They work Monday through Friday,⁵ and are paid an hourly wage rate. Medical appointment assistants are eligible to receive the Employer's standard vacation, sick, and holiday benefits. They report to the director of nursing.

Vocational Services Program

The vocational services program helps the Employer's clients obtain and maintain employment in the community and provides on-the-job training and support to employed clients. Vocational services staff provide vocational skills training, job matching, job development, job coaching, on-the-job training, and job retention counseling to clients, as well as transportation to and from community work sites. The vocational manager oversees the program, and he or she reports to the program director. Within the vocational services program the Employer has three job coaches and one vocational coordinator when the program is fully staffed. Vocational services operates out of the Employer's main building.

Job Coach

Primary Duties: Provide support and supervision while teaching clients work skills for community employment. Assist the vocational manager with general operations of the vocational department.

Description: Job coaches teach clients work skills and in so doing, provide support and supervision for clients, and they assist the vocational manager with general operations. Job coaches work with several clients at a time to help them find and apply for employment in the community and generally prepare for outside employment. When clients have outside employment, the job coaches will transport them to and from work, provide them with on-the-job

⁵ If a client has a medical appointment on the weekend, the residential trainers will take them and assist during the appointment.

training at the client's place of employment, and generally help them maintain employment. Job coaches are also required to be available to respond to client emergencies after hours, have discretion to prioritize duties and perform their duties with limited direction or supervision, and are involved in staff training, teaching modules of the DSP curriculum as assigned or approved, helping to complete on-the-job competencies, assisting in the orientation of new staff to the vocational department, and providing the vocational manager with information regarding work performance of departmental staff.

Requirements: Job coaches are required to have a high school diploma or GED, be able to physically assist mobility impaired clients and negotiate stairs at times, maintain a valid driver's license and auto insurance, and have a personal vehicle and phone for use at work. They are also required to be registered as a Developmental Disability Aide within three months of employment and have basic knowledge of Microsoft Office.

Terms and Conditions: Job coaches work out of an office the Employer's main building, though they spend time out in the community with clients, as well. They have a standard Monday through Friday work schedule. They report to the vocational manager. Job coaches are paid an hourly wage and are eligible for the Employer's standard vacation, sick, and holiday benefits.

Vocational Coordinator

Description: Vocational coordinators can be described as lead job coaches. The position is designed to be developmental and provide training to allow employees to advance within the organization. The coordinator performs regular job coach duties as described above and provides greater assistance to the vocational manager in managing the department. In addition to the job coaching duties, the vocational coordinator is responsible for some data entry, collecting client paystubs from job coaches and keeping them organized, and performing various other duties as assigned by the vocational manager. The vocational coordinator is also available to answer questions for other job coaches.

Requirements: Like the job coach, the vocational coordinator is required to have a high school diploma or GED, be able to physically assist mobility impaired clients and negotiate stairs at times, maintain a valid driver's license and auto insurance, and have a personal vehicle and phone for use at work. They are also required to be registered as a Developmental Disability Aide within three months of employment and have basic knowledge of Microsoft Office.

Terms and Conditions: Vocational coordinators work out of the Employer's main building, though they spend time in the community with clients, as well. They have a standard Monday through Friday work schedule. Vocational coordinators are paid an hourly wage, which is slightly higher than the job coaches and other employees, and they are eligible to receive the Employer's standard vacation, sick, and holiday benefits. They report to the vocational manager.

Developmental Training Services Program

Through the developmental training (“DT”) program the Employer develops individualized day programs for clients that focus on acquiring, increasing, and maintaining adaptive skills in daily living. Employees working in the developmental training program provide services to clients within a classroom setting at the Employer’s main building. The DT program is located in one-half of the main building and the work services program described below is located in the other half of the main building. The developmental training manager oversees the program, and he or she reports to the program director. Nine DT trainers, one DT coordinator, and one case manager work in the DT program when it is fully staffed.

Developmental Trainer

Primary Duties: Provide support and supervision while teaching clients daily living skills.

Description: DT trainers work in the developmental training side of the day program. They teach clients basic skills, plan, and present lessons, games, and activities in a classroom setting. DT trainers are also required to maintain their classrooms as a safe, clean environment, monitor client lunch and break periods, and supervise client outings as assigned.

Requirements: DT trainers are required to have a high school diploma or GED, be able to physically assist mobility impaired clients and negotiate stairs at times, maintain a valid driver’s license and auto insurance, and have a personal vehicle and phone for use at work. They are also required to be registered as a Developmental Disability Aide within three months of employment.

Terms and Conditions: DT trainers work in the Employer’s main building and have a standard work schedule, Monday through Friday. DT trainers are permitted two 15-minute breaks and one meal period each day. DT trainers are paid hourly and are eligible for the Employer’s standard sick, vacation, and holiday benefits. They report to the DT manager.

Developmental Training (“DT”) Coordinator

Description: Similar to the vocational coordinator position in the vocational services program, the DT coordinator position is a developmental position intended to offer additional training to employees so they may advance within the organization. The DT coordinator acts as a lead DT trainer. On top of regular DT trainer duties, DT coordinators are responsible for specific duties within the DT program to help ensure the program flows efficiently.

Requirements: DT coordinators are required to have a high school diploma or GED, be able to physically assist mobility impaired clients and negotiate stairs at times, maintain a valid driver’s license and auto insurance, and have a personal vehicle and phone for use at work. They are also required to be registered as a Developmental Disability Aide within three months of employment.

Terms and Conditions: DT coordinators work in the Employer's main building and have a standard Monday through Friday work schedule. DT coordinators have two 15-minute breaks and a standard meal period each day. They are paid an hourly wage, which is slightly higher than other employees, and they are eligible to receive the Employer's standard vacation, sick, and holiday benefits. The DT coordinators report to the DT manager.

Case Manager

Primary Duties: Provide case management for assigned clients. Assist DT manager with general operations of the department.

Description: Like the residential case managers, DT case managers provide case management for a number of assigned clients and assist the DT manager with general operations of the program. They develop and implement behavior plans and coordinate services to meet the needs of their clients. Case managers use discretion in program and client-related matters as well as prioritizing their own work and perform duties without direction or supervision. Additionally, they are involved in compliance and personnel functions. They ensure regulatory and policy compliance, assist in training and orientation of new hires, provide managers with information regarding work performance of other staff, teach modules in the DSP curriculum, and complete on-the-job competencies. DT case managers also help to develop and implement departmental priorities and goals and monitor departmental functions for efficiency.

Requirements: Case managers are required to be QIDP qualified and to complete continuing education requirements to maintain their QIDP status. To be QIDP qualified, they must have a bachelor's degree plus one-year experience working with developmentally disabled individuals. Case managers must also have the ability to organize, analyze, communicate, plan, and provide case management, maintain a valid driver's license and auto insurance, and have a personal vehicle and phone for use at work. They must be approved to administer medication within three months of employment and skilled in the use of Microsoft Office.

Terms and Conditions: DT case managers work out of the Employer's main building and report to the DT manager. They work flexible hours as they choose and are paid a higher hourly wage than most other classifications. They are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Work Services Program⁶

Through the work services program, the Employer obtains sub-contracted paid jobs, which clients complete for local and regional companies. Clients participating in the program perform their work on weekdays at the workshop located in the Employer's main building. The workshop shares the main building with the DT program. When there is no paid work available for clients, the work services program offers classes and recreational activities for clients during

⁶ To clarify, the record indicates that the operations manager oversees the work services program. The work service manager reports to the program director and oversees the home-based services program. The operations manager and program director are equals within the management hierarchy and both report to the executive director.

the times they would otherwise be working. The operations manager oversees the work services program. The operations manager reports directly to the executive director. When the program is fully staffed, one assistant production manager,⁷ three work supervisors, and one warehouse assistant work in the program.

Work Supervisor

Primary Duties: Provide support and supervision while teaching clients daily living and work skills.

Description: The work supervisors provide support and supervision to clients working in the Employer's workshop. They help teach clients the jobs they will perform, set up workstations, move materials through the production process, make sure production deadlines are met, perform quality control inspections, prepare completed work for shipment, maintain production flow, and ensure clients are performing their work safely. Work supervisors are also responsible for planning and providing educational, training, and recreational activities for clients when sub-contracted work is unavailable. They supervise client break times and lunch periods, as well. Work supervisors also monitor client productivity and attendance, report piece rate discrepancies, verify payroll data for accuracy, and complete janitorial duties as required.

Requirements: Work supervisors are required to have a high school diploma or GED, maintain a valid driver's license and auto insurance, and have a personal phone. Work supervisors must have the ability to lift and carry contract materials up to 50 pounds and have basic math skills for production record keeping. They are also required to be registered as a Developmental Disability Aide within three months of employment.

Terms and Conditions: Work supervisors report to the operations manager. They work in the Employer's workshop, located in the main building, which is open Monday through Friday. Work supervisors have a standard Monday through Friday work schedule and get two 15-minute breaks and a meal period each day. Work supervisors are paid an hourly wage and are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Warehouse Assistant

Primary Duties: Drive truck. Make pick-up and deliveries of job components and finished product. Perform logistic/ inventory related duties. Assist with supervising clients.

Description: The warehouse assistants drive a fork-lift in the workshop to move raw materials and finished product around as necessary, perform logistical and inventory duties, and help to supervise client breaks and lunch periods as assigned. They obtain customer signatures on shipping documents, perform quality control inspections, help to implement safety rules and procedures, and clean the workshop. The warehouse assistant also makes deliveries to or from local food pantries and occasionally takes clients to assist with the deliveries.

⁷ The Petitioner and Employer agree the assistant production manager should be excluded from the unit.

Requirements: Warehouse assistants must have a high school diploma or GED and be eligible to become DSP certified. They must have a Class C driver's license or be eligible to obtain a Class C driver's license, be able to lift and carry objects up to 50 pounds, and work on their feet all day if necessary. Warehouse assistants must be organized and possess basic MS Word and Excel skills, as well.

Terms and Conditions: The warehouse assistants report to the operations manager. They have a standard Monday through Friday work schedule and get two 15-minute breaks and a meal period each day. It is unclear whether warehouse assistants are paid on an hourly or salary basis.⁸ They are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Community Supports Program

The community supports program provides training and support to disabled clients and their families and service providers. Community supports services include intermittent training, support, and direction for developmentally disabled individuals living in their own homes. The program also provides support for family members living with disabled individuals. Services are based on the individual client's need and available on an on-call basis 24-hours a day. The director of community supports oversees the program, and he or she reports to the program director. When the community supports program is fully staffed, the Employer employs three community support residential trainers, one DSP specialist, and one case manager. Community supports program staff have offices in the Employer's main building.

Community Supports Residential Trainer

Primary Duties: Teach and provide support and supervision to clients in the community.

Description: Residential trainers in community supports teach and support clients like group home residential trainers, but they serve clients living in their own homes and functioning in the community. Trainers have appointments throughout their day to go to different clients' homes to help them with shopping, cooking, and running errands in the community. Community supports residential trainers are also expected to maintain logs of client appointments and services provided and account for clients' own finances, including bank accounts and public benefits.

Requirements: Community supports residential trainers are required to have a high school diploma or GED, pass the post-offer functional screening test if required, be able to physically assist mobility impaired clients and negotiate stairs at times, maintain a valid driver's license and auto insurance, and have a personal vehicle and phone for use at work. They are also required to

⁸ The Employer's witness testified that she did not have any management responsibility for the work services program in which the warehouse assistant works. She testified that the warehouse assistant is paid on an hourly basis, but the warehouse assistant job description, Employer's Exhibit 8, indicates the warehouse assistant is paid on a salary basis.

be registered as a Developmental Disability Aide and approved by the Employer to administer medications within three months of employment.

Terms and Conditions: Community supports residential trainers report to the director of community supports. They work a standard Monday through Friday schedule but are expected to be available to respond after hours in the case of a client emergency. Community supports residential trainers are paid an hourly wage and are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

DSP Specialist

Primary Duties: Teach and provide support and supervision to clients living in their own apartments or homes. Provide some case management, medical, and management of staff and clients.

Description: The DSP Specialist position is a developmental position. DSP specialists perform some specialized skills in addition to regular community supports residential trainer duties and going to clients' homes for appointments throughout the day. The DSP specialists also learn and perform some case management duties for clients and perform one-on-one care with lower functioning clients. Additionally, DSP specialists teach and train staff on service plan delivery, perform duties without direction or supervision, and recommend work assignments to other staff based on clients' needs.

Requirements: DSP specialists are required to have a high school diploma or GED, pass the post-offer functional screening test if required, be able to physically assist mobility impaired clients and negotiate stairs at times, maintain a valid driver's license and auto insurance, and have a personal vehicle and phone for use at work. They are also required to be registered as a Developmental Disability Aide and approved by the Employer to administer medications within three months of employment and be skilled in Microsoft Office.

Terms and Conditions: DSP specialists report to the director of community supports. They work a standard Monday through Friday schedule and are expected to be available to respond after hours in the case of a client emergency. They are paid an hourly wage, which is slightly higher than other employees, and they are eligible to receive the Employer's standard vacation, sick, and holiday benefits..

Case Manager

Primary Duties: Provide case management for assigned clients. Assist department manager with general operations of the home.

Description: Like the DT case managers, case managers in community supports provide case management for a number of clients in the community supports program and assist the director of community supports with general operations of the program. Case managers develop and implement behavior plans and coordinate services to meet the needs of their clients. Case

managers use discretion in program and client-related matters as well as prioritizing their own work and perform duties without direction or supervision. Additionally, they are involved in compliance and personnel functions. They ensure regulatory and policy compliance, assist in training and orientation of new hires, provide managers with information regarding work performance of other staff, teach modules in the DSP curriculum, and complete on-the-job competencies. Community Supports case managers also help to develop and implement departmental priorities and goals and monitor departmental functions for efficiency.

Requirements: Case managers are required to be QIDP qualified and to complete continuing education requirements to maintain their QIDP status. To be QIDP qualified, they must have a bachelor's degree plus one-year experience working with developmentally disabled individuals. Case managers must also have the ability to organize, analyze, communicate, plan, and provide case management, maintain a valid driver's license and auto insurance, and have a personal vehicle and phone for use at work. They must be approved to administer medication within three months of employment and skilled in the use of Microsoft Office.

Terms and Conditions: Case managers work out of the Employer's main building and report to the director of community supports. They work flexible hours as they choose. Case managers are paid a higher hourly wage than most other classifications, and they are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Recreation Services

The recreation services program falls under the umbrella of the community supports program on the Employer's organizational chart. The recreation services program provides opportunities for the Employer's clients to participate in recreation and leisure activities that promote and enhance quality of life and build and maintain friendships and community skills. A Special Olympics coordinator also works within recreation services, and he or she oversees Special Olympics coaches and volunteers who coordinate with the Special Olympics organization outside from the Employer. The Employer has one recreation assistant when the program is fully staffed.

Recreation Assistant

Primary Duties: Assist the recreation coordinator in conducting recreational activities for clients within Opportunity House programs and community-based individuals. Assist in the planning and preparation of assigned activities.

Description: The recreation assistants work with the recreation coordinator to plan, facilitate, and supervise client activities. They share an office in the main building with the recreation coordinator. Recreation assistants create a bi-monthly calendar of activities and clients sign up for the activities they wish to join. The recreation assistants then supervise clients during those activities with the recreation coordinator. Recreation assistants also provide back-up for residential trainers, work with Special Olympics participants, and perform other duties as assigned.

Requirements: Recreation assistants are required to have a high school diploma or GED, be able to physically assist mobility impaired clients, maintain a valid driver's license and auto insurance, and have a home telephone. They must be able to work flexible hours and be registered as a Developmental Disability Aide within three months of employment.

Terms and Conditions: Recreation assistants report to the recreation coordinator. They typically work a standard Monday through Friday schedule but are required to adjust their schedules based on client activities. They have two 15-minute breaks and a meal period each day. Recreation assistants are paid an hourly wage and are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Special Olympics Coach

Description: The Special Olympics coaches work seasonally and work with the Employer's Special Olympics coordinator⁹ and the outside Special Olympics organization to provide opportunities for clients to participate in sports. At least some Special Olympics coaches are volunteers rather than paid employees.

Home-Based Support Services Program

The home-based support services program helps to guide clients living in their own homes and with their families in choosing programs and services the client will participate in based on the client's need and within a monthly allocated budget. Employees in the home-based program help clients choose from a menu of programs and services provided by the Employer or outside entities, including day programs, direct therapies and services provided by domestic employees, nursing services, emergency home response services, and vehicle and home accessibility modifications. They also help clients and their families secure and access funding for those services, whether the Employer provides the services or not. The program is based out of the Employer's main building, but employees go to clients' homes or out into the community at times, as well. The work service manager oversees the program, and he or she reports to the program director. When the program is fully staffed, there are two DT trainers, one home-based services coordinator, and one home-based case manager.

Home-Based Developmental ("DT") Trainer

Primary Duties: Provide support and supervision while teaching clients daily living skills.

Description: It is unclear from the record how DT trainers in the home-based services program differ from the DT trainers working in the developmental training program; based on the program in which they work, home-based DT trainers presumably teach clients basic skills and plan and present lessons, games, and activities in a home-based or community setting.

⁹ The parties agree the Special Olympics coordinator should be excluded from the unit. The record contains limited information about the Special Olympics program and the coaches.

Requirements: DT trainers are required to have a high school diploma or GED, be able to physically assist mobility impaired clients and negotiate stairs at times, maintain a valid driver's license and auto insurance, and have a personal vehicle and phone for use at work. They are also required to be registered as a Developmental Disability Aide within three months of employment.

Terms and Conditions: The home-based services program operates out of the Employer's main building, but it is unclear from the record where exactly the home-based DT trainers primarily work and to whom they report.¹⁰ They have a standard Monday through Friday work schedule with two 15-minute breaks and a meal period each day. Home-Based DT trainers are paid an hourly wage and are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Home-Based Services Coordinator¹¹

Primary Duties: Provides case management services that assist participants and families in gaining access to needed Waiver and other Medicaid State Plan services as well as medical, social, educational, and other services. Case load may include clients from various programs. Primary duty is day-to-day oversight and administration of home-based services. Responsible for office or non-manual work that directly relates to the recommending or making of policy related to the program. Exercises discretion and independent judgement in decision making.

Description: Home-based services coordinators primarily oversee and administer home-based services. Coordinators monitor the Department of Health and Safety website for any policy changes applicable to the services clients are connected to, update the home-based services handbook provided to families participating in the program, and help clients and their families access funds to pay for the services. They work with the state-contracted agency that distributes funding to help families obtain the funds needed to pay for services and will contact the agency and/or the impacted family directly when issues arise. The coordinators also help families hire service providers and purchase non-medical transportation using the funds obtained. The home-based services coordinator is responsible for sixteen clients and families in the home-based program. Additionally, the home-based services coordinators share with case managers the responsibility for teaching a three-hour module on developmental disabilities in the Employer's DSP training course. The coordinators exercise discretion and independent judgement in making decisions related to client matters, analyzing problems, and implementing solutions without first going to management.

Requirements: Home-based services coordinators must be QIDP qualified. To be QIDP qualified, employees must have a bachelor's degree plus one-year experience working with

¹⁰ Testimony from the Employer's witness directly contradicted the Employer's organizational chart. The organizational chart shows the home-based DT trainers report to the home-based services coordinator, yet the Employer's witness testified that home-based DT trainers do not report to the home-based services coordinator but failed to indicate to whom they report.

¹¹ The parties stipulated the correct title for this position is home-based services coordinator.

developmentally disabled individuals. Supervisory experience is preferred for the home-based services coordinator position, and they must be able to organize, communicate, plan, and provide case management for clients. They also must maintain a valid driver's license and auto insurance and have a personal vehicle and phone for use at work and be skilled in the use of Microsoft Office.

Terms and Conditions: Home-based service coordinators report to the work service manager and primarily work 9:00 am to 5:30 pm, Monday through Friday. They may adjust their schedules based on client needs. They share an office with case managers in the main building. Home-based service coordinators are paid a higher hourly wage than most other classifications, and they are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Home-Based Case Manager

Primary Duties: Provide case management for assigned clients. Assist department manager with general operations of the department.

Description: Home-based case managers provide case management for a number of clients in the home-based program. They perform functions similar to the case management functions home-based services coordinators perform. The home-based case manager is responsible for four clients and families. Like the coordinators, case managers work with the state-contracted agency that distributes funding to help families obtain the funds needed to pay for services and will contact the agency and/or the impacted family directly when issues arise. Case managers will also help families hire service providers and purchase non-medical transportation using the funds obtained. Case managers use discretion and independent judgement in program and client-related matters, analyzing problems, and implementing solutions without first going to management, as well as prioritizing their own work and performing duties without direction or supervision. They are involved in compliance and personnel functions, ensure regulatory and policy compliance, assist in training and orientation of new hires, provide managers with information regarding work performance of other staff, teach modules in the DSP curriculum, and complete on-the-job competencies.

Requirements: Case managers are required to be QIDP qualified and to complete continuing education requirements to maintain their QIDP status. To be QIDP qualified, they must have a bachelor's degree plus one-year experience working with developmentally disabled individuals. Case managers must also have the ability to organize, analyze, communicate, plan, and provide case management, maintain a valid driver's license and auto insurance, and have a personal vehicle and phone for use at work. They must be approved to administer medication within three months of employment and skilled in the use of Microsoft Office.

Terms and Conditions: Home-based case managers work out of the Employer's main building and report to the work service manager. They work flexible hours as they choose. Case managers are paid a higher hourly wage than other classifications, and they are eligible to receive the Employer's standard vacation, sick, and holiday benefits.

Common Functions and Duties Among Employees

In addition to the primary duties specific to their own positions outlined above, most employees across all the Employer's programs are expected to perform some common job duties and functions related to client care. Essentially, when clients are in their care, all employees are expected to assist them with activities of daily living and provide supervision to ensure clients are safe and healthy. "Activities of daily living" are basic self-care activities such as eating, cleaning oneself, dressing, and using the bathroom. Most all employees are expected to implement emergency and safety plans, provide client orientation to the program in which the employee works, promote client integration into the community, exercise good judgment and patience in working with clients, and to maintain cooperative relationships with clients, parents/guardians, other agencies, co-workers, and other departments to accomplish agency goals.

Common Training and Requirements Among Employees

Furthermore, most or all employees are expected to have similar training and certifications. All employees who work directly with clients are required by the Illinois Department of Human Services to complete DSP (Direct Service Professional) training, which is a 40-hour training course taught by the Employer. Most or all employees must have First Aid and CPR certifications, annual Rule 50 training,¹² as well. Most or all employees are "mandatory reporters" of potential abuse, neglect, and exploitation of clients, as well. Employees must also carry the same auto insurance liability limits and have a personal vehicle and/or phone to use for work.

Contact Among Employees

It appears from the record that employees have substantial contact with employees working within the same program. Residential trainers have substantial contact among themselves. They work cooperatively in the group homes to provide continuous care for their clients and will coordinate so that the residential trainers in the home share their responsibilities somewhat equally. They also have some contact with residential trainers in other group homes, as they will take clients to visit clients living in the other group homes. Group home residential trainers also have some contact with the case managers and assistant house managers assigned to their homes. However, case managers and assistant house managers are assigned to cover more than one house, so residential trainers will not interact with them as regularly as they would with other residential trainers. Additionally, the amount of contact a particular residential trainer has with the case manager and assistant house manager will depend on his or her schedule. Some residential trainers only work weekends; thus, they may only see their case manager and/or assistant house manager on their respective on-call weekends.

Though the record is not particularly clear, it appears DT trainers have significant contact with other DT trainers and DT coordinators and some contact with DT case managers. Likewise,

¹² Rule 50 refers to state-mandated training on employee responsibility for identifying, reporting, and preventing abuse, neglect, and financial exploitation.

work supervisors would have significant contact among themselves and the warehouse assistant, and job coaches and vocational coordinators would have significant contact among themselves.

On the other hand, it appears that through the course of their work, residential trainers do not have significant contact with employees working in other programs. Other employees such as developmental trainers or medical appointment assistants come to the group homes to pick up or drop off clients at times. However, the evidence indicates that those employees don't typically go inside the group home; when picking up clients, they will wait in the vehicle for the client to come out and when dropping off clients, they will stay in the vehicle as the clients walk back into the group home.¹³

Employee Substitutions and Transfers

When the Employer is short-staffed, employees have the opportunity to and regularly do substitute or "sub" for employees in other classifications. When employees sub in another area, they report to the supervisor in the area in which they are subbing instead of their own supervisor. The Employer never assigns employees to work in a different program or job classification when they are working their regularly scheduled hours in their primary job classifications. At times, the Employer will require a group home residential trainer to sub for a residential trainer in another group home during their regularly scheduled shift when coverage issues arise. In these situations, a residential trainer substitutes for another residential trainer with the only difference being the location where the residential trainer is working.¹⁴ Subbing for employees in other programs is voluntary, and employees only sub in addition to their regularly scheduled hours.

The record reflects that since July 1, 2017, thirty-three different employees subbed in departments other than their own primary department.¹⁵ Some of those thirty-three employees substitute significantly more than others, with one employee subbing nearly 300 hours and another employee subbing only 1 hour. There appears to be no minimum requirement or maximum limit to the number of hours employees are permitted to sub, and employees are free to work only their own scheduled hours or pick up as many additional hours as they want.

In addition to subbing in other programs and classifications, employees transfer to different programs or job classification within the Employer's operations. Since July 1, 2017, fifteen employees transferred to a new job classification.¹⁶ Six transfers appeared to be within the same program, and eleven transfers were to a different program.

¹³ The record does not reflect how much contact employees in other programs have with each other.

¹⁴ The record does not reflect that similar intra-program substitutions are required in the Employer's other programs.

¹⁵ The record does not reflect how many employees voluntarily sub additional hours in their own primary program or job classification.

¹⁶ Two of these fifteen employees actually transferred twice within the time frame. One employee transferred from the residential program to the vocational program and then back to the residential program, and another employee transferred from the residential program to the recreation program and then back to the residential program.

Handbook

The Employer maintains one handbook, which contains the Employer's code of conduct and various other policies and procedures. The handbook applies to all employees, though certain policies apply differently to different classifications of employees. Specifically, residential staff are singled out in the work schedules, rest and meal periods, hourly staff timekeeping, compensation, holidays, vacation, sick leave, and bad weather policies within the Employer's handbook.

The handbook provides that non-residential full-time employees work a standard 40-hour week consisting of 8-hour workdays Monday through Friday (excluding an unpaid lunch period). In contrast, full-time residential staff work a variable work schedule for a total of 35 to 40 hours awake time¹⁷ and may have paid meal periods. Additionally, because residential staff provide 24-hour care at group homes, they exclusively are expected to work extra hours to fill in when needed, stay on duty until the next shift staff person reports for duty, and arrange for substitutes when unable to work their scheduled hours.

In terms of rest and meal periods, all employees receive breaks and meal periods, though they may not be equal in length or frequency and may not occur at the same times of day. Employees who work in the main building and in developmental training have two 15-minute breaks a day, one at mid-morning and one in mid-afternoon, and a 30-minute unpaid lunch period scheduled by the supervisor. Employees who work in group homes or in the community may take a paid 15-minute break for every four consecutive hours worked and the supervisor dictates when their breaks should be taken. They also receive a meal period determined by the supervisor, and employees working on a "continuous operation" basis (i.e. residential trainers) are paid for meal periods, as they eat meals while continuing to care for clients.

All or nearly all employees are paid on an hourly basis.¹⁸ The handbook describes that residential staff who work overnight shifts are paid hourly and have a base wage and a wage agreement wage. Residential trainers, lead residential trainers, and residential subs are the only job classifications who work overnight shifts. During the hours in which residential trainers are awake during sleepover shifts, they are paid the wage agreement wage, which is higher than the base wage. The wage agreement wage includes the base rate, employee benefits rate (to account for vacation, holiday, sick, personal, and other paid leave time), and sleep time rate. When residential trainers are sleeping during their shift, they are paid their base wage, which is an hourly rate similar to the hourly rates paid to other employees at the same level.

The Employer considers job responsibilities, qualifications, and years of service in determining the base hourly rate for all employees. Case managers and home-based services coordinators make a higher hourly wage than other employees because they are required to be

¹⁷ Residential sleepover staff may work a 52-hour or longer shift, for example, but since they sleep at the home, they may only be awake for 35 to 40 hours of the shift.

¹⁸ It is unclear from the record how the warehouse assistant is paid, as there is evidence that the position is paid hourly and evidence that the position is paid a salary.

QIDP qualified. DSP specialists, vocational coordinators, DT coordinators, assistant house managers, and lead residential trainers make less than the case managers and home-based services coordinators but more than the work supervisors, DT trainers, job coaches, medical appointment assistants, warehouse assistants, recreation assistants, residential trainers (making their base wage), and residential subs. Except for certain residential trainers, all employees receive vacation, holiday, sick, and personal paid leave benefits. Residential trainers' time off benefits are incorporated into their wage agreements, so they do not receive additional paid time off. Likewise, overnight residential employees are not eligible for the reimbursement of unused sick leave benefit provided to other employees. Additionally, the Employer's policy concerning bad weather does not apply to employees working in group homes or providing services to individuals living on their own in the community. The group homes and home-based services never close, and employees are expected to stay at work until another employee arrives regardless of the circumstances.

II. BOARD LAW

A. Community of Interest

When examining the appropriateness of a unit, the Board must determine not whether the unit sought is the only appropriate unit or the most appropriate unit, but rather whether it is “*an* appropriate unit.” *Wheeling Island Gaming*, 355 NLRB 637, 637 n.1 (2010) (emphasis in original) (citing *Overnite Transp. Co.*, 322 NLRB 723 (1996)). In determining whether a unit is appropriate, the Board looks at whether the petitioned-for employees have shared interests. *See Wheeling Island Gaming*. Additionally, the Board analyzes “whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from that unit to warrant a separate bargaining unit.” *PCC Structurals*, 365 NLRB No. 160, slip op. at 11 (emphasis in original). *See also Wheeling Island Gaming*, 355 NLRB at 637 n.1 (the Board's inquiry “necessarily proceeds to a further determination of whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant establishment of a separate unit”). In weighing the “shared and distinct interests of petitioned-for and excluded employees . . . the Board must determine whether ‘excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.’” *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11 (emphasis in original) (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2nd Cir. 2016)). Once this determination is made, “the appropriate-unit analysis is at an end.” *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11.

In making these determinations, the Board relies on its community of interest standard, which examines:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent

contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id. (citing *United Operations*, 338 NLRB 123 (2002)).

In contrast to the Board's former standard under *Specialty Healthcare*, "at no point does the burden shift to the employer to show that any additional employees it seeks to include share an overwhelming community of interest with employees in the petitioned for unit." *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11. Rather, "parties who believe that a petitioned-for group improperly excludes employees whose interests are not sufficiently distinct from those of employees within the proposed group will . . . introduce evidence in support of their position." *Id.* Additionally, when applicable, the above analysis should consider the Board's established guidelines for appropriate unit configurations in specific industries. *Id.*

B. "Regular" Employment and Eligibility to Vote

The Board's objective in deciding the eligibility of intermittent employees is "to distinguish 'regular' part-time employees from those whose job history with the employer is sufficiently sporadic that it is most accurately characterized as 'casual.'" *Sisters of Mercy Health Corp.*, 298 NLRB 483, 483 (1990). To determine whether intermittent (on-call, per diem, casual, etc.) employees should be included in a bargaining unit, the Board considers standard community of interest factors and whether the employees perform unit work *and* whether they are employed "regularly." *Trump Taj Mahal Casino Resort*, 306 NLRB 294, 295 (1992). An employee's ability to reject work when offered and the lack of similar benefits are not determinative of an individual's employment status so as to exclude the individual from the unit as a casual employee. *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1196 (1994) (citing *Mid-Jefferson County Hospital*, 259 NLRB 831 (1981)).

To ascertain regularity, the Board examines whether an on-call employee has worked a sufficient number of hours with sufficient regularity to share a "real continuing interest in the terms and conditions of employment offered by the employer." *Trump Taj Mahal Casino*, 306 NLRB 294, 296 (1992), *enfd.* 2 F.3d 35 (3d Cir. 1993); *see also Columbus Symphony Orchestra*, 350 NLRB 523, 524 (2007). Under the Board's longstanding and most widely used test, the *Davison-Paxon* formula, an on-call employee is found to have sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages 4 or more hours of work per week for the last quarter prior to the eligibility date. *Id.* (citing *Macy, R. H., Co., Inc., Davison-Paxon Co. Div.*, 185 NLRB 21, 23–24 (1970)). The Board explicitly defined the "last quarter prior to the eligibility date" as the 13-week period immediately preceding the eligibility date. *Woodward Detroit CVS, LLC*, 355 NLRB 1115 (2010) (citing *Hardy Herpolsheimer's*, 227 NLRB 652 (1976)). In sum, to be eligible for inclusion in the bargaining unit and to vote, intermittent employees must perform work similar to regular employees in the unit and must work an average of at least four hours per week in the 13 weeks preceding the election eligibility date.

C. Supervisory Status and Eligibility to Vote

Section 2(11) of the Act defines a supervisor as,

Any individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The burden of proving supervisory status within the meaning of Section 2(11) of the Act rests with the party asserting that such supervisory status exists. *See Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003). Thus, that party must show: (1) that the alleged supervisor has the authority to engage in any one of the supervisory functions enumerated above; (2) that the exercise of such authority is not of a merely routine or clerical nature, but requires the use of “independent judgment;” and (3) that the authority is exercised “in the interest of the Employer.” *See Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006).

The Board has explained that “to exercise independent judgment, an individual must ‘at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.’ A judgment is not independent ‘if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.’” *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 888-89 (2014) (citing *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006)).

III. APPLICATION OF BOARD LAW TO THE FACTS OF THIS CASE

A. Community of Interest

1. Organization of the Plant

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer’s operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer’s production and maintenance employees. See, *Check Printers, Inc.* 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1289 and 1291 (2000).

In this case, the unit sought by Petitioner conforms to an administrative grouping of the Employer. The record is clear that the petitioned-for unit falls solely within the Employer’s residential program and more specifically in the Employer’s group homes. Functionally, the group home residential trainers sought by Petitioner provide staffing in the Employer’s group

homes 24-hours a day, 7-days a week, and provide continuous care to clients in those group homes. The group home residential trainers conform to an administrative function and grouping of the Employer's operation.

Within the administrative grouping – the Employer's group homes – the Employer seeks to also include the lead residential trainers, residential subs, food services director, assistant house managers, and residential case managers. The lead residential trainers and residential subs conform with the residential trainers, since functionally as a group, they provide 24-hour continuous care for clients in group homes. The food services director, assistant house managers, and residential case managers conform to the same administrative grouping but functionally do not provide 24-hour continuous care.

2. Interchangeability and Contact among Employees

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081).

In this case, the record fails to reveal evidence of significant employee interchange between the employees the parties agree are in the unit and the employees the Employer seeks to include. More specifically, the record reveals that the Employer never assigns employees to perform job duties different from those of their own primary job classification during their regularly scheduled work hours. If qualified, employees have the option to substitute in other programs and job classifications as much or as little as they want. Employees can substitute in other programs and classifications in addition to their regular work hours, but there is no evidence that employees are given temporary work assignments in other programs.

Also relevant for consideration with regard to interchangeability is whether there are permanent transfers among employees in the unit sought by a union. However, the existence of permanent transfers is not as important as evidence of temporary interchange. *Hilton Hotel Corp.*, supra. In this matter the record reveals some evidence of permanent transfers between the employees the parties agree are in the unit and the employees the Employer seeks to include. Since July 1, 2017, approximately ten employees have transferred to or from the residential program to or from another of the Employer's programs.

Also germane is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. See for example, *Casino Aztar*, 349 NLRB 603, 605-606 (2007). Here, the record reveals that the employees the parties agree are in the unit work side-by-side with one another and cooperate with each other to provide

continuous care for their clients and maintain the group homes in which they work. They also have some contact with the residential trainers in other group homes, as they will take clients to visit other clients living in another group home. Additionally, the residential trainers Petitioner seeks to include in the unit work almost exclusively in the group homes. While they take clients out into the community at times to shop for the home, attend appointments, and perform other errands, the residential trainers spend the majority of their time in the group homes.

In contrast, there is little evidence in the record of work-related contact between the employees the parties agree are in the unit and the employees the Employer seeks to include, and little or no evidence that they work in the same areas. In their regular daily work, the group home residential trainers have very limited contact with employees in the classifications the Employer seeks to include in the unit. Other employees such as Developmental Trainers or Medical Appointment Assistants will pick up or drop off clients at the group homes, but there is little to no interaction between the residential trainers and the other employees during pick-ups and drop-offs. If a residential trainer chooses to sub in another area, he or she would have contact with the employees in that area while performing the same job as those employees but not while performing his or her regular residential trainer duties. Furthermore, the employees the Employer seeks to include in the unit work primarily in the main building or out in the community, whereas the residential trainers whom the parties agree are in the unit work primarily in the group homes.

There is evidence that the employees the parties agree are in the unit have some contact with the case managers and assistant house managers assigned to their homes. Residential case managers and assistant house managers typically share an office with each other or a house manager in one of the group homes they cover. Case managers and assistant house managers are assigned to cover more than one house, so residential trainers will not interact with them as regularly as they would with other residential trainers. Additionally, the amount of contact a particular residential trainer has with the case manager and assistant house manager will depend on his or her schedule and the house in which they work. Some residential trainers only work weekends; thus, they may only see their case manager and/or assistant house manager during the respective case or assistant house manager's on-call weekends or during drop-ins.

3. Common Supervision

Another community-of-interest factor is whether the employees in dispute are commonly supervised. In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resources Associates*, supra at 402; *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact or functional integration. *United Operations*, supra at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, supra at 607, fn

11. Rather, more important is the degree of interchange, contact, and functional integration. Id. at 607.

In this case the record reveals that the employees the parties agree are in the unit are separately supervised from most employees the Employer seeks to include in the unit. More specifically, the group home residential trainers, whom the parties agree should be included in the unit, report to a house manager. In addition to the petitioned-for residential trainers, the lead residential trainers, residential subs, and assistant house managers report to their respective house managers, and the food services director reports to the CLF house manager. The record indicates the house managers have authority to hire, fire, discipline, evaluate, and direct the day-to-day work of the employees they supervise. House managers report to the residential director.

The employees the Employer seeks to also include in the unit report to various other managers who have supervisory authority over them as follows: the residential case managers report to the assistant residential director; the medical appointment assistants report to the director of nursing; the job coaches and vocational coordinator report to the vocational manager; the DT trainers, DT coordinator, and DT case managers report to the DT manager; the work supervisors and warehouse assistants report to the operations manager; the community supports residential trainers, DSP specialist, and community supports case managers report to the director of community supports; the recreation assistant reports to the recreation coordinator; the Special Olympics coaches report to the Special Olympics coordinator; the home-based DT trainers report to the home-based services coordinator or the work service manager; and the home-based services case managers and the home-based services coordinator report to the work service manager.

4. The Nature of Employee Skills and Functions

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same Employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Company, Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, in spite of lack of common supervision or evidence of interchange. *Phoenician*, supra.

In this case the record reveals that all employees have both primary duties and common duties; thus, the employees the parties agree are in the unit share certain job functions, skills, and duties with, but can also be distinguished from, the employees the Employer contends should

also be included in the unit. More specifically, all employees are expected to ensure clients are safe and maintain basic activities of daily living when in their care. With the exception of case managers and home-based services coordinators,¹⁹ most employees must meet similar minimum qualifications to be hired, including having a high school diploma or GED, the ability to physically assist mobility impaired individuals, a valid driver's license and minimum auto insurance limits, and a personal phone and/or vehicle to use for work. Likewise, most all employees receive similar training and certifications; all employees who work directly with clients are required by the Illinois Department of Human Services to complete DSP training, and most or all employees must also have First Aid and CPR certifications and annual Rule 50 training concerning abuse, neglect, and financial exploitation of clients.

The record also reveals that the primary job duties of employees the parties agree should be in the unit are distinguishable from the primary job duties of most other employees the Employer seeks to include in the unit. Residential trainers, lead residential trainers, and residential subs are the only employees who teach, support, and supervise clients on a continuous 24/7 basis in the group homes. Clients are not necessarily in the home all the time if they participate in day programs or work in the community, yet when clients are not home, the residential trainers are expected to continue to do laundry, prepare meals, clean, do the shopping, and generally maintain the homes for the clients. The 24-hour continuous nature of the group home residential trainers' work and the home setting in which they work distinguishes their functions from the other employees.

5. Degree of Functional Integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's work flow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

In this matter the record reveals that the employees the parties agree are in the unit and the employees the Employer maintains should be included are fairly functionally related. More specifically, all the employees provide services to clients with the same goal in mind, which is to promote the independence of their clients while ensuring their health and safety. The Employer's operation is relatively functionally integrated. Clients are treated as individuals; thus, the Employer's programs are provided in an a la carte manner. Clients and their guardians are free to choose the programs and services the client participates in based on the client's needs. Clients may live at home and participate in the developmental training or work services programs during

¹⁹ Case managers and home-based services coordinators must be QIDP certified, which requires a bachelor's degree and at least one year of relevant experience.

the week or they may live in one of the group homes and work in the community certain days of the week and participate in the day program on other days of the week. The overall services the Employer provides are functionally integrated in that clients often move from one program or service to another and most clients receive services in more than one of the Employer's programs, employees working in the various programs don't have significant contact with employees working in other programs.

6. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the facts that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation Company*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corporation*, 221 NLRB 1145 (1996).

In the instant case the record reveals that the employees the Employer maintains should be included in the unit share some common terms and conditions of employment with employees who the parties agree are in the unit. Specifically, the Employer maintains one handbook, which applies to all employees. Among others, the handbook contains the code of conduct, compliance, corrective action, pay and benefits, computer, phone, and information systems use, and substance abuse policies and procedures. While the handbook in general applies to all employees, certain policies within the handbook apply differently to the employees the parties agree are in the unit. In particular, residential staff are singled out in handbook policies covering work schedules, rest and meal periods, hourly staff timekeeping, compensation, holidays, vacation, sick leave, and bad weather.

7. Conclusion

The Union asserts the group home residential trainers share a community of interest sufficiently distinct from the interests of the Employer's other employees, and the Employer asserts that the group home residential trainers are not distinct, but rather share a community of interest with nearly all of the Employer's other employees. I find that the employees the parties agree are in the unit – the group home residential trainers – share a community of interest with the lead residential trainers and residential subs, and that together, the group home residential trainers, lead residential trainers, and residential subs share a community of interest sufficiently distinct from the other employees the Employer seeks to include in the unit.

The residential trainers, lead residential trainers, and residential subs are distinct due to the unique group home setting in which they work and the 24-hour continuous nature of the services they provide. Though not all of these employees work overnight or sleepover schedules, as a group, the residential trainers, lead residential trainers, and residential subs are responsible for 24/7 client care and group home housekeeping duties unlike the Employer's other employees. The uniqueness of this group of employees is further evidenced by the employer's handbook and policies. The handbook and policies apply to all employees, yet only residential staff are explicitly distinguished in several of the Employer's policies. Additionally, residential trainers, lead residential trainers, and residential subs are the only employees who work overnight schedules, whether they are able to sleep or must stay awake during the overnight, and they are the only employees eligible for wage agreements. Although the assistant house managers, residential case managers, and food services coordinator also work in the Employer's group homes, I find that they do not provide care to clients on a continuous 24-hour basis like the residential trainers, lead residential trainers, and residential subs. Thus, I will direct an election among the group home residential trainers, lead residential trainers, and residential subs, as I find that together they share a community of interest sufficiently distinct from the other employees the Employer asserts should be included in the unit.²⁰

B. Voting Eligibility of Residential Subs

In this case the Employer maintains a list of residential subs who meet the minimum qualifications and have completed the necessary training requirements to work as residential trainers. Residential subs work side-by-side with regular residential trainers performing identical functions; thus, they clearly share a community of interest with the residential trainers and should be included in the bargaining unit found appropriate. Using the Board's well-established *Davison-Paxon* formula, I find that all residential subs who have worked an average of at least four hours per week in the thirteen weeks preceding the election eligibility date are regular part-time employees and eligible to vote in the election directed herein.

C. Supervisory Status of Case Managers and Assistant House Managers

Petitioner asserts that case managers and assistant house managers are supervisors under Section 2(11) of the Act. As the party asserting the exclusion of case managers and assistant house managers, Petitioner has the burden to prove their supervisory status. *See Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003). I find that Petitioner has not carried that burden. The Employer offered evidence that neither case managers nor assistant house managers perform any of the Section 2(11) indicia of supervisory status. While case managers and assistant house managers are both afforded some discretion and independent judgement, the record reveals that such discretion is not applicable to matters involving other employees' terms and conditions of employment. Rather, case managers have authority to make independent decisions related to case management, client behavior plans, and their other job functions, and assistant house managers

²⁰ I find the following employees should be excluded from the unit: vocational coordinators, job coaches, case managers, developmental training coordinators, developmental trainers, recreation assistants, Special Olympics coaches, community supports residential trainers, home-based facilitators, medical appointment assistants, food service directors, work supervisors, warehouse assistants, and assistant house managers.

have discretion to make decisions related to house management, such as scheduling necessary repairs and making sure household essentials are stocked in the group home. Petitioner offered some evidence that case managers may be able to effectively recommend employee discipline; however, the evidence was almost entirely hearsay. Absent compelling evidence that case managers and assistant house managers perform any of the supervisory indicia, I find that they are not supervisors as defined by the Act.

Though I find that case managers and assistant house managers are not supervisors under Section 2(11) of the Act, as outlined above, I find they do not share a community of interest with the unit in which I have directed an election. Case managers must be QIDP qualified and primarily perform case management functions for several clients at a time. Though assistant house managers have the same minimum qualifications and report to the same house managers as the employees in the unit directed, their primary duties include assisting in the management of the group home under the direction of the house manager or in the absence of the house manager. The assistant house manager position was created as a development position, and the Employer's witness testified that the Employer's intent is for assistant house managers to have additional responsibilities and exercise independent discretion in managing the operations of the group homes. As such, I find that neither the case managers nor the assistant house managers will be eligible to vote in the election directed herein.

IV. CONCLUSION

In determining that the unit sought by Petitioner is not appropriate, I have carefully weighed the community-of-interest factors cited in *United Operations*, supra. I conclude that the unit sought by Petitioner is not appropriate because the record reveals that the lead residential trainers and residential subs also share a community of interest with the petitioned-for group home residential trainers. In view of my conclusion that the unit sought by Petitioner is not appropriate, I conclude that the appropriate unit is all full-time and regular part-time group home residential trainers, lead residential trainers, and residential subs. As a unit, the group home residential trainers, lead residential trainers, and residential subs share a community of interest sufficiently distinct from the remainder of the employees. I also conclude that all residential subs who have worked an average of at least four hours per week in the thirteen weeks preceding the election eligibility date are regular part-time employees and should be eligible to vote. Finally, I find that case managers and assistant house managers are not supervisors under Section 2(11) of the Act, but nevertheless should not be eligible to vote because they do not share a community of interest with the employees in the appropriate unit.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²¹

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time residential trainers, lead residential trainers, and residential subs employed by the Employer at its Manor, Linden, Alden, Rich Road, Sacramento, Hudson, Maplewood, Center Cross, Brian Street, and CLF group homes.

Excluded: All office clerical employees, professional employees, and guards and supervisors as defined in the Act, and all other employees.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by RETAIL WHOLESALE AND DEPARTMENT STORE UNION COUNCIL, UFCW.

A. Election Details

I have determined that a mail ballot election will be held. Employees in the unit are scattered in the sense that they work in ten different group homes and their work schedules vary significantly. Although all ten worksites are located relatively close to each other and the Employer's main building, due to the nature of their work, employees cannot leave their worksites unless another employee is present to cover for them. Furthermore, some employees work only weekends or overnights, and some employees, particularly the residential subs, may not work at all in certain weeks. All the employees are never present at a common location at common times. Because employees in the unit work substantially different schedules, seven days a week and because they cannot leave their worksite without another employee present to cover for them, I am directing a mail ballot election.

²¹ The Employer, an Illinois corporation, with an office and principle place of business in Sycamore, Illinois, is engaged in the business of providing residential, vocational, and ancillary services for adults with intellectual and developmental disabilities. In the fiscal year beginning July 1, 2018 and ending June 30, 2019, a representative time, the Employer purchased and received at its Sycamore, Illinois facility goods valued in excess of \$50,000 from suppliers who received the goods directly from points outside the state of Illinois. During the same representative time, the Employer derived gross revenues of \$1,000,000 or more from all sales and performance of services.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00pm ET on Monday, August 26, 2019, ballots will be mailed to voters from the National Labor Relations Board, Region 25 office located at 575 N. Pennsylvania Street, Room 238, Indianapolis, IN 46204. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. All ballots should be returned to the National Labor Relations Board, Subregion 33 office located at 101 SW Adams Street, Suite 400, Peoria, IL 61602.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by close of business Tuesday, September 3, 2019, should communicate immediately with the National Labor Relations Board by either calling the Subregion 33 office at (309)671-7080 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Subregion 33 office on Tuesday, September 10, 2019 at 10am CT. In order to be valid and counted, the returned ballots must be received in the Subregional office, prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **August 3, 2019**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **August 14, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

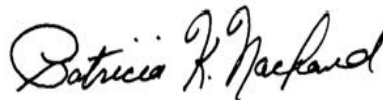
VI. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 12, 2019



PATRICIA K. NACHAND
REGIONAL DIRECTOR
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